Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, Secretary of State of Illinois, in his official capacity,

Appellant,

vs.

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Appellee.

Appeal From The United States District Court For The Northern District Of Illinois

MOTION TO AFFIRM

ALAN M. FREEDMAN
RICHARD JAY HESS
ALLEN L. RAY
Mid-South Law Office
4655 S. Michigan Boulevard
Chicago, Illinois 60653
Attorneys for Appellee

SORG/CHICAGO U.S.A.

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The appellee, by and through counsel, moves that the judgment of the three-judge court be affirmed on the grounds that the federal constitutional questions presented are so unsubstantial as not to need further argument.

QUESTION PRESENTED

Whether Section 6-206(a)(3) of the Illinois Motor Vehicle Code (Ill. Rev. Stat. 1973, ch. 95½ §6-206(a)(3) and the administrative procedures employed pursuant to that statute fail to afford due process of law to a motor vehicle operator licensee, when the statute authorizes the Illinois Secretary of State, at his discretion and without a prior hearing, to suspend or revoke an operator's license upon a determination by the Secretary that the licensee's driving record demonstrates that the individual has been repeatedly convicted of violations which indicate a lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway.

SUPPLEMENTAL STATEMENT OF THE CASE

In order to clarify certain facts that have been omitted or confused by appellant's statement of the case, the appellee notes that the findings of fact and the findings of law in this action are more accurately related by the three-judge court in its Memorandum Opinion of January 20, 1976. See appellant's Appendix A.

ARGUMENT

THE ADMINISTRATIVE PROCEDURE OF THE ILLINOIS SECRETARY OF STATE, CONDUCTED PURSUANT TO ILLINOIS STATUTE, DENIES DUE PROCESS TO ILLINOIS DRIVERS, WHEN THE SECRETARY SEEKS TO SUSPEND OR REVOKE THE DRIVING PRIVILEGES OF AN INDIVIDUAL BECAUSE THE SECRETARY BELIEVES THAT THE DRIVER HAS BEEN REPEATEDLY CONVICTED OF VIOLATIONS WHICH INDICATE THE LACK OF ABILITY TO EXERCISE ORDINARY OR REASONABLE CARE OR INDICATES DISRESPECT FOR TRAFFIC LAWS AND THE SAFETY OF OTHERS

I.

THE NOTICE PROCEDURE AFFORDED TO THE APPELLEE DENIED HIM ADEQUATE NOTICE AND THE OPPORTUNITY TO CONTEST THE ACTION OF THE SECRETARY OF STATE AT A MEANINGFUL TIME AND MANNER

The three-judge panel found that the appellee received notice of his license revocation three days prior to its effective date. See appellant's Appendix A-2 & 3. The only advice received by the appellee regarding his right to contest this action came with the revocation notice which stated that the licensee was afforded "an opportunity for a hearing upon written request to the Secretary of State." See Notice of Revocation attached as an Exhibit in plaintiff's complaint and reproduced herein as appellee's Appendix A. This procedure constitutes a denial of procedural due process.

This Court has clearly stated that once obtained, a driver's license is "not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell* v. *Burson,* 402 U.S. 535, 539 (1971). A fundamental component of procedural due process is the right to be heard at a meaningful time and in a meaningful manner. See *Armstrong* v. *Manzo,* 380 U.S. 545 (1965), *Goldberg* v. *Kelly,* 397 U.S. 254 (1970). As stated in *Mullane* v. *Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950), this right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce, or contest."

The appellee was not afforded the right to a hearing at a meaningful time and he was not, in effect, given notice that this matter was "pending." On June 3, when Dennis Love received the notice that a decision had been made to revoke his license effective June 6, 1975, it was a practical impossibility for Love to contest this revocation prior to the time of its effective date. This was especially true if he was required "to make a written request" just to get the hearing scheduled. In two recent decisions of this Court which limit the right of individuals to hearings prior to the time of the effective date of the governmental action, the Court relied upon the fact that the affected individuals were allowed to contest the adverse action in some meaningful way prior to the effective date of the governmental action. See *Arnett* v. *Kennedy,* 416 U.S. 134 (1974) and *Mathews* v. *Eldridge,* —— U.S. —— (1976).[1]

[1] Nevertheless, as discussed below, the appellee contends that suspension or revocation of driving privileges requires a prior evidentiary due process hearing as in *Bell* v. *Burson,* 402 U.S. 535, 539 (1971). See also *Sniadach* v. *Family Financial Corp.,* 395 U.S. 337 (1969), which required a prior notice and hearing where wages were to be taken.

In *Arnett,* the Court reviewed administrative procedures used to discharge a federal employee for cause. The majority held that an evidentiary hearing was not required because the employee received 30 days written advance notice of the reasons for his proposed discharge along with supporting written materials. He had the opportunity to respond prior to the effective date of the adverse action, and he had the opportunity for an informal conference before the effective date of the action. In *Mathews,* Social Security procedures for benefit terminations were reviewed. In that case, it was held that a prior hearing was not necessary because the individual had an opportunity, at least two months prior to the effective date of the action, to respond and to contest the tentative adverse decision of the Social Security Administration. Dennis Love had none of the procedural benefits afforded Kennedy or Eldridge, let alone the prior evidentiary hearing which *Bell* required in this situation. Based on these prior decisions of this Court, the inadequate notice, in itself, requires an affirmance of the lower court decision.

II.

THE APPELLEE HAS A SUFFICIENT AND SUBSTANTIAL INTEREST IN A GOVERNMENTAL ENTITLEMENT WHICH REQUIRES A HEARING PRIOR TO THE TIME OF DEPRIVATION

In *Bell* v. *Burson,* 402 U.S. 535, 539 (1971), this Court declared that:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.

This statement from *Bell* effectively defines the interest to be protected and the nature of that protection for the purpose of the present case before the Court. Additionally, as this Court stated in *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969), a prior hearing with adequate notice was required in a situation where the property right impaired consisted of wages. In this respect, *Love* is analogous to *Sniadach.* The appellee is a truck driver and his operator's license is essential to his livelihood. The deprivation that the appellee would have suffered if the defendant had not been enjoined would have been substantial and would have had an immediate effect on his livelihood as a truck driver. As noted in *Sniadach, supra* at 343, the loss of wages may "as a practical matter drive a family to the wall."

Illinois, in fact, does recognize that a substantial interest in this government entitlement exists because it allows an individual, no matter why the license was revoked or suspended, to apply for limited driving privileges. See Ill. Rev. Stat. 1973, ch. 95½ §6-205(c) (Appendix B), and ch. 95½ §6-206(c)(3) (Appendix C). Nevertheless, while recognizing that a substantial interest exists, the state fails to provide the procedural protection that is constitutionally required in this circumstance. This is precisely the defect that this Court found to exist in *Bell.*

In *Bell,* a county clergymen's driver's license was taken without a prior hearing. His professional responsibilities, from which he derived his livelihood, required hm to travel through three rural communities on a regular basis. Dennis Love, the appellee, was the sole support of his wife, then pregnant and one child. His driver's license was essential for the maintenance of his livelihood and that of his family.

III.

THE APPELLEE'S INTEREST IN THE HARDSHIP LICENSE PROVIDED FOR BY STATUTE LACKED CONSTITUTIONAL SAFEGUARDS WHICH PRODUCED AN UNACCEPTABLE INTERRUPTION OF THIS GOVERNMENTAL ENTITLEMENT

Section 6-206(c)(3) (Appendix C) provides that an individual, no matter what the reason for the initial suspension or revocation, may be allowed to continue to drive, even if only for certain limited purposes. One such purpose is to avoid hardship where a wage earner is required to operate a vehicle to earn his livelihood. See *People* v. *Manikus,* 106 Ill. App.2d 315, 246 N.E. 2d 142, 146 (1969). This right to drive to earn a livelihood is perhaps the most significant and essential part of the general driver's license granted by the State. It is a special property interest granted by the State and one which requires particular constitutional protection. In the present case, the facts clearly demonstrate that even minimal due process protection was denied to this appellee.

In *North Georgia Finishing Inc.* v. *Di-Chem Inc.,* 419 U.S. 600, 606 (1975), this Court cited with approval *Fuentes* v. *Shevin,* 407 U.S. 67 at 86 (1972), for the proposition that:

> The Fourteenth Amendment draws no bright lines around three day, ten day or fifty day deprivation of property. Any significant taking of property by the state is within the provision of the Due Process Clause.

This proposition is particularly apposite in the present case. In this case the appellee was given three days notice of the intention of the defendant to revoke his general driver's license privileges. As discussed above, it would have been impossible to contest the action of the Secretary

prior to its effective date. If the appellee could not receive a hearing prior to the revocation of his general driving privileges, he could not, and in fact did not, receive an opportunity for a hardship hearing prior to the time of revocation. But for the Temporary Restraining Order of the lower court, there would have been a significant period of time when the right to operate a vehicle would have been interrupted.

The findings of the trial court clearly demonstrate the potential interruption and denial of the right. The trial court conditioned the granting of its Temporary Restraining Order, which restrained the State from revoking the appellee's license, upon the requirement that the appellee immediately apply for a hardship license. This Temporary Restraining Order was entered on June 6, 1975. Not until July 25, 1975, more than six weeks after the hardship application was made, and in the face of this lawsuit, did the defendant see fit to grant a hardship license to the appellee. But for the granting of the Temporary Restraining Order, the appellee would not have been able to drive to earn a livelihood for a minimum of seven weeks. This type of interruption and denial of a governmental entitlement, all without a prior hearing, was constitutionally impermissible.

IV.

NO EXTRAORDINARY GOVERNMENTAL INTEREST EXISTED TO OVERCOME THE APPELLEE'S RIGHT TO ADEQUATE NOTICE AND THE RIGHT TO A PRIOR EVIDENTIARY HEARING.

Contrary to the argument of the State, no emergency situation existed which would have allowed the State to deny the appellee adequate notice and the right to prior evidentiary hearing. The State has contended at page 10

of its Jurisdictional Statement that its interest "in the speedy removal of the safety hazard from its highways" outweighed the right of the appellee to adequate notice and a prior evidentiary hearing. The decisions of this Court when applied to the facts of this case belie the State's contention.

In *Boddie* v. *Connecticut,* 401 U.S. 371 (1971), it was stated that:

> The root requirement [was] that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. *Id.* at 379-380.

In *Fuentes* v. *Shevin, supra* this Court reiterated the necessity for a prior hearing and amplified the meaning of "extraordinary situations." According to *Fuentes,* summary seizure or attachment of property is consistent with due process only in narrow circumstances: to secure jurisdiction in a state court to collect the internal revenue of the United States; to meet the needs of a national war effort; to prevent the economic disaster of a bank failure; to protect the public from misbranded drugs and contaminated food, *Id.* at 91-92, n. 23-28. *Fuentes* also declared that the deprivation of other interests beside outright seizure or attachment of property, requires an unusually strong governmental need for prompt action to justify such confiscation without notice and the right to a prior hearing.

Read together, *Bell, Boddie,* and *Fuentes,* leave no doubt but that circumstances must be truly unusual to justify postponing an opportunity to be heard, especially when an important interest, such as an operator's license is involved. Since *Bell,* lower federal courts, in a variety of

circumstances have affirmed the right to adequate notice and prior evidentiary hearing.[2]

Turning to the facts of this case, as discussed by the District Court at A-7 of the Jurisdictional Statement, it is clear that the State itself did not view this matter as an extraordinary situation, considering the amount of time within which the State chose to act in this alleged "emergency situation." *cf. Jones* v. *Penny,* (n.-2). The State, by its purported standard could have acted to suspend or revoke after March 31, 1975. Even giving the State, for the purpose of its argument, the benefit of the contention that it could not act until after 30 days after the conviction,[3] the lower court noted that the State did not, in fact, act to revoke until the first week of June. As the trial court noted at A-7 of the Jurisdictional Statement:

> A period of almost a month elapsed before plaintiff was sent his notice of revocation. This period of time, while not extreme, affords ample opportunity for a hearing.

The State, judged by its own action in this case, did not really view this as an emergency situation. The State's argument is, in reality, no more than an attempt to bring the "additional administrative expense" argument, which was rejected in *Bell,* within the "emergency situation" exception of *Bell, supra* at 542.

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[2] *Holland* v. *Parker,* 354 F. Supp. 106 (1973); *Sloane* v. *Kentucky,* 379 F. Supp. 652 (1974); *Reese* v. *Kassab,* 334 F. Supp. 744 (1971); *Almeida* v. *Lucey,* 372 F. Supp. 109 (1974); *Warner* v. *Trombetta,* 348 F. Supp. 1068 (1972), *aff'd,* 410 U.S. 919 (1973); *Cicchetti* v. *Lucey,* 377 F. Supp. 215 (1974); *Jones* v. *Penny,* 387 F. Supp. 383 (1974).

[3] The last driving violation conviction occurred on March 31, 1975. The State contended below that this did not become a "final" judgment until 30 days after the conviction. There is no basis in Illinois law for such a contention. The State in fact waited two months before it acted to revoke the appellee's license.

V.

THE REVOCATION PROCEDURE IS DISCRETIONARY AND NOT MANDATORY

Contrary to the assertion of the State, the finding of the three-judge panel (at Appellant's Jurisdictional Statement A-5 & 6) as well as the statutory and regulatory scheme set out by the State, all point to the inescapable conclusion that the revocation is discretionary and not mandatory. Indicative of the Secretary's discretion are the following:

1. Ill. Rev. Stat. 1973, ch. 95½ §6-206, partially cited as appellant's Appendix D.
2. Rule 6-206, cited as appellant's Appendix E.
3. The appellee's driving record, as compiled by the Secretary, and as attached to the Secretary's brief in support of the motion to dismiss (herein as Appendix D) indicates by the code "02" that the appellee suffered a "discretionary" revocation on June 6, 1975.

Turning to the hardship portion of the general driving privilege at Ill. Rev. Stat. 1973, ch. 95½ §6-206 (c)(3) (See Ill. Rev. Stat. 1973, ch. 95½ §6-206 in its entirety as Appendix C), the statute on its face grants the Secretary complete discretion. In these circumstances, a prior hearing with adequate notice becomes even more of a constitutional necessity. See *Nusberger* v. *Wisconsin Division of Motor Vehicles,* 362 F. Supp. 515 (1973) and *Kentucky* v. *Thomas,* 467 S.W. 2d 335 (Ky. 1971).

VI.

THE REVOCATION PROCEDURE FAILS TO PROVIDE AN ADEQUATE POST-REVOCATION REMEDY

Even assuming *arguendo,* that a revocation without a prior hearing was constitutionally permissible, the statutory scheme is still defective because it fails to provide a

prompt and adequate post-revocation hearing as to both the general driving privilege and the limited hardship privilege, the latter being essential for livelihood.

In *North Georgia Finishing* v. *Di-Chem, Inc., supra,* at 613, this Court struck down a garnishment statute because the statute failed to provide for an early post-garnishment hearing. Mr. Justice Powell stated in his concurrence that:

> The most compelling deficiency in the Georgia procedure is its failure to provide a prompt and adequate post-garnishment hearing.

The proposition that a prompt and adequate post-revocation hearing is required when a prior hearing is not conducted, is further supported in *Mitchell* v. *W.T. Grant,* 416 U.S. 600 (1974), where the statute was distinguished from the statute in *North Georgia Finishing* by the fact that the *Mitchell* statute triggered an immediate hearing after the taking of the property interests. This prompt post hearing procedure saved the statute in *Mitchell.* In the present case there is no such prompt and adequate post-revocation procedure. See the uncontested affidavit of counsel, originally attached to the appellee's motion for summary judgment and reproduced herein as Appendix E.

Finally, a speedy post-revocation hearing is required in the present case because no realistic prospect of recoupment exists for the appellee, if the Secretary is found to have exercised his discretion arbitrarily or in error. In *Arnett* and *Mathews,* one key factor relied upon by the majority was that ultimate restitution to the affected individual was statutorily guaranteed if that individual should ultimately prevail. In *Mitchell* and *North Georgia Finishing,* a bond requirement was an essential element of each statute so as to guarantee that the affected individuals would be made whole if they ultimately prevailed. In this case, there is no opportunity to recoup wages lost from private employment or other damages suffered as the result of the inability of this driver to operate a motor vehicle for business purposes or personal enjoyment.

CONCLUSION

For the reasons stated herein, the appellee moves that the judgment of the three-judge court be affirmed on the grounds that the federal constitutional questions presented are so unsubstantial as not to need further argument.

Respectfully submitted,

ALAN M. FREEDMAN
RICHARD JAY HESS
ALLEN L. RAY*
Mid-South Law Office
Legal Assistance Foundation
of Chicago
4655 South Michigan Blvd.
Chicago, Illinois 60653
312-538-0733

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* Ms. Gwyneth D. Gillingham, Senior Law Student, DePaul University, Chicago, Illinois, assisted counsel in the preparation of this Motion To Affirm.

APPENDIX

02

STATE OF ILLINOIS **OFFICE OF THE SECRETARY OF STATE** SPRINGFIELD

NOTICE OF REVOCATION

Dennis N. Love
5322 South State, Apartment #208
Chicago 60609
L100-1744-9207

07-21-49
304
06-20-75

	Mo. Day Yr.
Date of Revocation	06 06 75
License Number	L100-1744-9207
Date of Conviction	
Authority: Section *Illinois Vehicle Code*	6-206(a)3

Pursuant to the provisions of Section 6-209 of the Illinois Vehicle Code, YOU ARE HEREBY NOTIFIED that an Order revoking your Illinois drivers license or permit, your privilege to operate a motor vehicle, and your privilege of obtaining a license within this State, has been entered on the date shown above.

This action has been taken as a result of: Your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws.

YOUR LICENSE MUST BE SURRENDERED IMMEDIATELY—SEE REVERSE

William F. Logan

William F. Logan, Administrator
Drivers License Division

IMPORTANT—READ CAREFULLY

1. All drivers licenses and permits must be immediately surrendered to the Secretary of State as required by Sections 6-109 and 6-301 of the Illinois Vehicle Code. Please use the enclosed return envelope. (Do not return this notice with your license. Keep for your records.)

2. The operation of motor vehicles by you after the effective date of this notice is not permitted and is a VIOLATION OF Section 6-303 of the Illinois Vehicle Code. Conviction of such operation is punishable by imprisonment for not more than one year and in addition a fine may be imposed not to exceed $1,000.

3. Any person whose license or permit has been revoked under the provisions of Section 6-206 of the Illinois Vehicle Code shall be afforded an opportunity for a hearing, upon written request to the Secretary of State, *If you live in Chicago or any part of Cook County*, write to the Secretary of State in case of the motor vehicle facility whose Chicago address is listed on the accompanying colored card.

4. A license which has been revoked cannot be restored or restored. However, application for a new license may be made after the expiration of one year from the date of revocation, or upon removal of cause.

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APPENDIX B

§ 6-205. Mandatory revocation of license or permit—Hardship cases

(a) Except as hereinafter provided, the Secretary of State shall forthwith revoke the license or permit of any driver upon receiving a report of such driver's conviction of any of the following offenses:

1. Manslaughter or reckless homicide resulting from the operation of a motor vehicle;

2. Violation of Section 11-501 of this Act relating to the offense of operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

3. Any felony under the laws of any State or the federal government in the commission of which a motor vehicle was used;

4. Violation of Section 11-401 of this Act relating to the offense of leaving the scene of a traffic accident involving death or personal injury;

5. Perjury or the making of a false affidavit or statement under oath to the Secretary of State under this Act or under any other law relating to the ownership or operation of motor vehicles;

6. Conviction upon 3 charges of violation of Section 11-503 of this Act relating to the offense of reckless driving committed within a period of 12 months;

7. Conviction of the offense of automobile theft as defined in Section 4-102 of this Act;

8. Violation of Section 11-504 of this Act relating to the offense of drag racing;

9. Violation of Chapters 8 and 9 of this Act;

10. Violation of Section 12-5 of the "Criminal Code of 1961", as amended,[1] arising from the use of a motor vehicle;

(b) The Secretary of State shall also forthwith revoke the license or permit of any driver in the following situations:

1. Of any minor upon receiving the notice provided for in Section 2-9 of the Juvenile Court Act, as amended,[2] that such minor has been adjudicated under that Act as having committed an offense relating to motor vehicles prescribed in Subsections (a), (b), (c) and (d) of Section 4-102 of this Act;

2. Of any driver, for one year, upon receiving notice of the completion of the sentence imposed upon conviction of such driver for the commission of any of the following sex offenses: rape, sexual crime against children, crime against nature, soliciting in the streets, and the manufacture, sale or delivery of controlled substances or instruments used for illegal drug use or abuse;

3. Of any driver, for 5 years, upon receiving notice of the completion of a subsequent sentence imposed upon conviction of a driver of a second sex offense named hereinabove;

4. Of any person when any other law of this State requires either the revocation or suspension of such license or permit.

(c) Whenever a person is convicted of any of the offenses enumerated in this Section, the court may recommend and the Secretary of State in his discretion, without regard to whether such recommendation is made by the court, may, if application is made therefor, issue to such person a restricted driving per-

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Vehicle Code § 6-205

mit granting the privilege of driving a motor vehicle between his residence and his place of employment or within other proper limits, except that this discretion shall be limited to cases where undue hardship would result from a failure to issue such restricted driving permit. In each case the Secretary of State may issue such restricted driving permit for such period as he deems appropriate, except that such permit shall expire within one year from the date of issuance. A restricted driving permit issued hereunder shall be subject to cancellation, revocation and suspension by the Secretary of State in like manner and for like cause as a drivers license issued hereunder may be cancelled, revoked or suspended; except that a conviction upon one or more offenses against laws or ordinances regulating the movement of traffic shall be deemed sufficient cause for the revocation or suspension of a restricted driving permit.

(d) This Section is subject to the provisions of the Driver License Compact.

Amended by P.A. 78-663, § 1, eff. Jan. 1, 1974.

APPENDIX C

§ 6-206. Discretionary authority to suspend or revoke license or permit —Right to a hearing

(a) The Secretary of State is authorized to suspend or revoke the license, permit or driving privileges of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:

1. Has committed an offense for which mandatory revocation of license or permit is required upon conviction;

2. Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under the provisions of Section 6-204(2), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways; conviction upon 3 charges of violation of Section 11-601 of this Act committed within a period of 12 months shall be deemed grounds for the revocation or suspension of a license or permit under this Section, provided that no such revocation or suspension shall be entered more than 6 months subsequent to the date of conviction of the 3rd offense;

3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway;

4. Has by unlawful operation of a motor vehicle caused or contributed to an accident resulting in death or injury to any person, except that any action taken by the Secretary of State under the provisions of this sub-section shall be confined to a period of 6 months after a conviction of the unlawful operation of a violation of a law or ordinance regulating the movement of traffic, which violation is related to such accident, or to a period of not more than one year subsequent to the date of said accident, whichever period terminates later;

5. Has permitted an unlawful or fraudulent use of such license or permit;

6. Has been lawfully convicted of an offense in another State which if committed within this State would be grounds for suspension or revocation;

7. Has refused or failed to submit to an examination provided for by Section 6-207 of this Act or has failed to pass such examination;

8. Is ineligible for such license or permit under the provisions of Section 6-103 of this Act;

9. Has made a false statement or knowingly concealed a material fact in any application for a license or permit;

10. Has displayed or represented as his own any license or permit not issued to him;

11. Has operated a motor vehicle upon a highway of this State when his drivers license or permit or privilege so to do or privilege to obtain a license or permit under this Act was revoked or suspended unless the operation was authorized by a restricted driving permit issued pursuant to this Act;

12. Has submitted to an examination or has obtained the services of another person to submit to an examination for the purpose of obtaining a drivers license or permit for some other person;

13. Has operated a motor vehicle upon a highway of this State when his drivers license was invalid under the provisions of Section 6-110 of this Act. Provided that for the first such offense the Secretary of State may suspend such license or permit not more than 60 days, for the second such offense not more than 90 days, and for the third such offense not more than 1 year;

14. Has been convicted of any violation of Section 6-301;

15. Has violated Section 21-2 of the Criminal Code of 1961 relating to criminal trespass to vehicles in which case, the suspension shall be for one year;

16. Has violated Section 11-204 of this Act relating to fleeing from a police officer;

17. Has refused to submit to a test as required under Section 11-501.1 of this Act and such person has not sought a hearing as provided for in Section 11-501 of this Act;

18. Has, since issuance of a license or permit, been adjudged to be afflicted with or suffering from any mental disability or disease.

19. Has violated Section 6-101(a) or 6-101(b) of this Act relating to driving without a license.

20. Has violated Section 6-104 of this Act relating to classification of drivers license.

(b) If any conviction forming the basis of a suspension or revocation authorized hereunder is appealed, the Secretary of State may rescind or withhold the entry of the order of suspension or revocation, as the case may be, provided that certified copy of a supersedeas or other stay order is filed with the Secretary of State. If such conviction is affirmed on appeal, the date of the conviction shall relate back to the time the original judgment of conviction was entered and the 6 month limitation hereinabove prescribed shall not apply.

(c) 1. Upon suspending or revoking the license or permit of any person as authorized in this Section, the Secretary of State shall immediately notify such person in writing of the order revoking or suspending the license or permit. Such notice to be deposited in the United States mail, postage prepaid, to the last known address of such person.

2. If the Secretary of State suspends or revokes the license of a person under sub-paragraph 2 of paragraph (a) of this Section, a person's license to drive a commercial vehicle only as an occupation shall not be revoked or suspended unless 5 offenses were committed, at least 2 of which occurred while operating a commercial vehicle in connection with his regular occupation.

Within 25 days after the mailing of a notice of suspension or revocation by the Secretary of State, any such driver may submit an affidavit on forms to be provided by the Secretary of State setting forth the facts of his employment as a driver of a commercial vehicle. The affidavit shall also state the number of offenses committed while driving a commercial vehicle in connection with his regular employment or occupation. The affidavit shall be accompanied by his driver's license which shall be suspended by the Secretary of State who shall thereupon send to said driver a permit to drive a commercial vehicle in his regular occupation. Unless such affidavit is properly completed by the driver and received by the Secretary of State within such 25 day period, such driver's license to drive any motor vehicle shall be revoked or suspended as set forth in the notice that was mailed pursuant to sub-paragraph 2 of paragraph (c) of this Section. The Secretary may revoke or suspend the license of such person to drive any vehicle other than a commercial vehicle in connection with his regular occupation upon notice of conviction of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under Section 6-[illegible]12), committed within any 12 month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways.

In lieu of the affidavit provided for above, the driver may request a hearing pursuant to Section 2-118 of this Act.

Any person who falsely states any fact in the affidavit required herein shall be guilty of perjury under Section 6-302 of this Act and upon conviction thereof shall have his driver's license revoked without further rights under this sub-paragraph 2.

3. At the conclusion of a hearing pursuant to Section 2-118, the Secretary of State shall either rescind or continue an order of revocation or shall substitute an order of suspension therefor; or, good cause appearing therefor, rescind, continue, change or extend his order of suspension. If the Secretary of State does not rescind his order, he may upon application therefor, to relieve undue hardship, issue a restricted driving permit granting the privilege of driving a motor vehicle between the residence and the place of employment of such person or within other proper limits. In each case the Secretary may issue such restricted driving permit for such period as he deems appropriate, except that such permit shall expire within one year from the date of issuance. A restricted driving permit issued hereunder shall be subject to cancellation, revocation and suspension by the Secretary of State in like manner and for like cause as a drivers license issued hereunder may be cancelled, revoked or suspended; except that a conviction upon one or more offenses against laws or ordinances regulating the movement of traffic shall be deemed sufficient cause for the revocation or suspension of a restricted driving permit.

(d) This Section is subject to the provisions of the Drivers License Compact.

Amended by P.A. 77-2739, § 1, eff. Oct. 1, 1972; P.A. 78-663, § 1, eff. Jan. 1, 1974; P.A. 79-1141, § 1, eff. Jan. 1, 1976.

APPENDIX D

L100-1744-9207 03600
07-21-49 M 06-23-75 75-06-24

THE FOLLOWING RECORD ABSTRACT IS FURNISHED FROM THE DRIVERS LICENSE FILE OF THE PERSON IDENTIFIED ABOVE, PURSUANT TO THE PROVISIONS OF THE ILLINOIS VEHICLE CODE

DENNIS N LOVE L100-1744-9207
5322 S STATE APT 208
CHICAGO 07 21 49

M 6 01 105 BLK BRN 1 06 26 74 D * 0-0-0 07 21 77

Valid Temporary Restricted Driving Permit

TYPE ACTION	DATE OF ARREST	DATE OF ACTION	DESCRIPTION OF ACTION	ACCIDENT OR DOCKET NO.	TERMINATION DATE OF SUSPENSION	STOP IN EFFECT
96	04 21 68	05 21 68	1 103 00	935489		
99	09 15 68	10 17 68	7 202 00	5831989		
99	08 20 68	10 10 68	7 218 00	5824431		
99	08 14 69	08 27 69	1 049 01	6871409		
03		11 04 69	6 206 A2		01 04 70	NO
73		01 04 70	6 206 A2			
94	11 12 69	01 29 70	6 210 01	6756794		
03		03 17 70	6 303 B0		05 17 70	NO
73		05 17 70	6 303 B0		05 17 70	
14		04 03 74		118019		
99	08 24 74	11 21 74	1 0601 03	45925		
99	08 16 74	09 06 74	8 0601 07	265516		
60		03 27 75				
99	02 12 75	03 31 75	1 0601 03	2741482		
02		06 06 75	6 206 A3			YES
47		06 06 75				
10		06 17 75		35		

This is to certify, that to the best of my knowledge and belief, this is a true and correct record of my traffic driving record as the information set out herein is a true and accurate copy of the captioned individual's driving record, furnished by driver license number, and I certify that all [illegible] contained herein pertain to the captioned individual.

Secretary of State

(SEE REVERSE FOR EXPLANATION OF CODES AND COLUMN HEADINGS)

EXPLANATION OF CODES AND COLUMN HEADINGS

Although most of the information appearing at the top of the abstract are self-explanatory, two need clarification.

S.E. "9" indicates a Secretary of State instruction reported to Secretary of State.

TYPE: This indicates one of the following types of licenses:

1. Driver's License
2. Chauffeur's License
3. Corrected Driver's License
4. Instruction Permit
5. Duplicate Instruction Permit
6. Corrected Instruction Permit

TYPE ACTION . . . .

01 MANDATORY REVOCATION
02 DISCRETIONARY REVOCATION
03 DISCRETIONARY SUSPENSION
04 SAFETY RESPONSIBILITY SUSPENSION
05 FINANCIAL RESPONSIBILITY SUSPENSION
06 UNSATISFIED JUDGMENT SUSPENSION
07 REVOCATION PURSUANT TO 6A-205 (3)
08 CANCELLATION OF LICENSE
09 MANDATORY SUSPENSION
10 ARREST ORDER ISSUED
12 CITED FOR REVOCATION
13 SIGNED AFFIDAVIT FOR LOST OR STOLEN LICENSE, LIEU OF BAIL, ETC.
14 COLLISION INVOLVING PROPERTY DAMAGE
15 COLLISION INVOLVING FATAL INJURY
16 COLLISION INVOLVING PERSONAL INJURY
21 TERMINATION OF SAFETY RESPONSIBILITY SUSPENSION
22 "STOP" PLACED IN FILE
27 LICENSE SURRENDERED TO FOREIGN STATE AND RETURNED TO ILLINOIS
28 REPORTED CLEARED
32 DENIAL OF RESTRICTED DRIVING PERMIT
33 DENIAL OF LICENSE
34 EXTENSION OF REVOCATION
35 EXPIRATION OF SUSPENSION
40 FORMAL HEARING
41 HEARING BOARD REVIEW
47 F.R. FUTURE PROOF REQUIRED
49 DRIVER TRAINING INSTRUCTOR OR SCHOOL 6-15 DRIVER
50 INFORMAL CONFERENCE HELD
52 SHOW CAUSE HEARING . . . RECOMMEND ACTION
53 SHOW CAUSE HEARING . . . RECOMMEND NO ACTION
55 6-111 OR 6A-111 CONFERENCE
60 WARNING LETTER ISSUED
71 PROBATIONARY PERMIT ISSUED
72 REINSTATEMENT AFTER EXTENDED REVOCATION
73 TERMINATION OF SUSPENSION
74 REINSTATEMENT AFTER REVOCATION
75 TERMINATION OF EXTENDED SUSPENSION
76 TERMINATION OF FINANCIAL RESPONSIBILITY SUSPENSION
77 TERMINATION OF UNSATISFIED JUDGMENT SUSPENSION
78 RESTRICTED DRIVING PERMIT ISSUED
84 F.R. FUTURE PROOF FILINGS COMPLETED
93 IMMEDIATE ACTION BOND FORFEITURE (NO POINTS ASSIGNED)
94 IMMEDIATE ACTION CONVICTION (NO POINTS ASSIGNED)
95 BOND FORFEITURE (NO POINTS ASSIGNED)
96 CONVICTION (NO POINTS ASSIGNED)
97 BOND FORFEITURE (POINTS ASSIGNED)
99 CONVICTION (POINTS ASSIGNED)

OTHER CODES

DATE OF ARREST: The column with this heading refers to the date this traffic ticket was issued.

DATE OF ACTION: The column with this heading refers to the date the action was taken; e.g., the conviction date in the case of a traffic law violation, rather than the date of the offense. There is one exception. . . In the case of a discretionary suspension (Type Action 03), the date which the suspension becomes effective is inserted, instead of the date which the order was entered and filed.

DESCRIPTION OF ACTION:

DESCRIPTION OF OFFENSE: This column describes the type or nature of a traffic offense. The code which is used here is composed of the Chapter and Section number of the Illinois Vehicle Code, Uniform Act Regulating Traffic on Highways or the Municipal Code of the City of Chicago. For example, offense code 018.00 refers to Section 48 of the Uniform Act Regulating Traffic On Highways. . . "Reckless Driving". The parallel offense of the Illinois Vehicle Code will appear as 105-03.00. .

The single digit code which precedes the Section number refers to the identity of the law. . . 1. Illinois Vehicle Code or Uniform Act Regulating Traffic on Highways . . . 2. Local Ordinance (other than Chicago) . . . 3. Illinois Tollway Laws and Regulations . . . 4. Penal Code (felony). . . . 6. The Illinois Driver Licensing Law. . . 7. Chicago Municipal Ordinance . . . 8. Foreign State and Other.

STATUTORY AUTHORITY: The code used here refers to the chapter and section of the Illinois Vehicle Code or the Illinois Vehicle Law which provides the authority for the action taken; e.g., 6-205 A2 and 6A-205 A2 is a mandatory revocation of a license after conviction of operating a motor vehicle while under the influence of intoxicating liquor.

ACCIDENT OR DOCKET NUMBER: This column contains the docket number or arrest ticket number (when the same) of a specific traffic offense. It also contains the motor vehicle accident number which is assigned to each case by the Safety Responsibility Section of the Highway Division.

TERMINATION OF SUSPENSION: This column indicates the termination date of the discretionary suspension. In cases where the length of the suspension is indicated by the number of months, such as "6".

STOP IN EFFECT: This column indicates if a suspension or revocation is in effect.

BEST COPY AVAILABLE

APPENDIX E

AFFIDAVIT

I, Alan M. Freedman, attorney at law, on oath state that I represented the following persons at administrative hearings before a Hearings Officer of the Illinois Secretary of State, Drivers License Division. These hearings were held to review the propriety of the Secretary's revocation of each party's Illinois drivers license. In every case, a minimum of four months elapsed between the filing of a written request for a hearing and the rendering of a final administrative decision. In one instance, the appellant has been waiting more than nine months for a determination of her appeal.

Mr. William Smith 4362 S. Wentworth Ave. Chicago, Illinois 60609 D.L.#: S 530-9202-0181	Hearing requested: 3-1-73 Hearing held: 3-21-73 Decision rendered: 7-6-73 Results: Revocation lifted
Mr. Lee Simmons 5952 S. Morgan St. Chicago, Illinois 60621 D.L.#: S 552-5200-3345	Hearing requested: 3-13-75 Hearing held: 4-4-73 Decision rendered: 6-28-73 Results: Revocation lifted
Mr. Daniel A. Shelly 406 E. 109th St. Chicago, Illinois 60628 D.L.#: S 400-1611-4284	Hearing requested: 7-13-73 Hearing held: 8-2-73 Decision rendered: 1-8-74 Results: Revocation lifted
Ms. Verlenia M. Harris 942 E. 76th St. Chicago, Illinois 60619 D.L.#: H 620-8734-5760	Hearing requested: 10-14-74 Hearing held: 12-3-74 Decision rendered: none to date

.....

Alan M. Freedman

Subscribed and sworn to before me this ..... day of 1975

.....

Notary Public

APPENDIX F

FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT, EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity

Defendant

---

75 C 1821

COMPLAINT

1. This is an action for injunctive relief wherein the plaintiff Dennis N. Love seeks to enjoin the defendant Michael J. Howlett from revoking the driver's license of the plaintiff and others similarly situated without a hearing prior to revocation. This is also an action to declare the described practice to be in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2. Jurisdiction is conferred upon the court by Title 28 Section 1343 of the United States Code, providing for jurisdiction over claims arising under Title 42, Section 1983 and the Fourteenth Amendment to the United States Constitution. Jurisdiction is also conferred upon this Court under Title 28, Sections 1331, 2201 and 2202 of the United States Code. This controversy exceeds the amount of $10,000 exclusive of interest and costs. An application is

hereby made for the convening of a three-judge federal district court to hear and determine this matter pursuant to 28 U.S.C. 2281 and 2284.

3. The plaintiff Dennis N. Love is a resident of Chicago, Illinois, presently employed as a truck driver, whose license to operate a motor vehicle has been revoked effective June 6, 1975 pursuant to the Illinois Motor Vehicle Code, (hereinafter *Code*) Chapter 95½, Illinois Revised Statutes, Section 6-206(a)(3), a copy of which is attached hereto as exhibit A.

4. The defendant Michael J. Howlett is the Secretary of State of the State of Illinois and is authorized, pursuant to Chapter two of the *Code,* to issue, suspend and revoke operator licenses in the State of Illinois.

5. The defendant Howlett derives his authority to suspend or revoke an operator's license without a preliminary hearing pursuant to 95½ I.R.S. 6-206(a).

6. Dennis N. Love brings this action on his own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons licensed to operate motor vehicles by the State of Illinois and whose licenses are subject to revocation pursuant to 95½ I.R.S. 6-206(a)(3). The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims and defenses of the named plaintiff are typical of the claims and defenses of the class; the named plaintiffs will fairly and adequately protect the interests of the class; the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants; defendants have acted and refused to act on grounds generally ap-

plicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and questions of law and fact common to class members predominate over questions affecting individual members, and a class action is superior to other available methods for the fair and efficient methods of adjudication.

7. On or about June 3, 1975, the plaintiff received, without prior expectation or notice, a statement from the Office of the Secretary of State, pursuant to 95½ I.R.S. 6-209, that his license to operate a motor vehicle had been revoked effective June 6, 1975, a copy of the said statement being attached hereto as exhibit B. The said notice was postmarked June 2, 1975.

8. 95½ I.R.S. 6-206(a)(3) violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution in that it denied the plaintiff and others similarly situated a hearing prior to the revocation action of the defendant.

9. The plaintiffs have no adequate remedy at law.

WHEREFORE the plaintiff on his own behalf and on behalf of all persons similarly situated, prays as follows:

1. That a three-judge court be convened pursuant to 28 U.S.C. 2281, 2284.

2. That the Court enter a declaratory judgment declaring 95½ I.R.S. 6-206(a)(3) to be violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. That the Court enter an injunction to enjoin the enforcement of 95½ I.R.S. 6-206(a)(3) by the defendant Secretary of State, his agents and his successors in office.

4. That the Court award appropriate damages.

5. That the Court enter such appropriate relief as may be fit and proper.

COUNT II

1. This is an action for injunctive relief wherein the plaintiff Dennis N. Love seeks to enjoin the defendant Michael J. Howlett from revoking the driver's license of the plaintiff and others similarly situated pursuant to 95½ I.R.S. 6-206(a)(3), the said statute being vague and failing generally to give to the plaintiff and others similarly situated adequate notice of the standards used by the defendant Secretary of State when making the determination to suspend or revoke, all in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2-7. Plaintiff realleges paragraphs two through seven of Count I of the Complaint as paragraphs two through seven of Count II of the Complaint.

8. The plaintiff has no adequate remedy at law.

WHEREFORE the plaintiff prays as follows:

1. That a three-judge court be convened pursuant to 28 U.S.C. 2281, 2284.

2. That the Court enter a declaratory judgment declaring 95½ I.R.S. 6-206(a)(3) to be violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

3. That the Court enter an injunction enjoining the defendant Secretary of State his agents and his successors in office from suspending or revoking operator licenses pursuant to 95½ I.R.S. 6-206(a)(3).

4. That the Court award appropriate damages.

5. That the Court enter such appropriate relief as may be fit and proper.

/s/ Alan M. Freedman

/s/ Richard J. Hess

/s/ Allen L. Ray

Alan M. Freedman
Richard J. Hess
Allen L. Ray
Woodlawn Law Office
1105 East 63rd Street
Chicago, Illinois 60637
955-6300

APPENDIX G

FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT, EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity

Defendant

---

75 C 1821

AFFIDAVIT IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING ORDER

Dennis N. Love, being first duly sworn, does deposes and state as follows:

1. I am the plaintiff in the above captioned case. I have knowledge of the facts contained herein and could testify competently thereto if called as a witness.

2. I reside at 740 East 68th Street, Chicago, Illinois with my wife Kathy Love and one child, Eric Love.

3. My wife is presently pregnant.

4. I am 25 years of age and have been licensed to operate a motor vehicle since 1968.

5. My first and only employment upon being discharged from the United States Army has been with the Thompson-Starr Route Company as a truck driver.

6. My education ended after the second year of high school and I have no training in any other type of employment which would enable me to support my family.

7. If my driver's license is revoked, I will be unable to continue my employment as a truck driver.

8. The loss of my driver's license will cause great hardship and will threaten me with immediate and future loss of a livelihood.

/s/ Dennis N. Love

Subscribed and sworn to
before me this 5th day
of June, 1975.

.....
Notary Public